

COMMITTEE ON JOINT SCHOOL BUILDINGS

September 23, 2003

6:45 PM

Chairman Herbert called the meeting to order.

The Clerk called the roll.

Present: School Committee Members Herbert, Paradis, Beaudry, Kelley-Broder, Aldermen Pinard, DeVries, Garrity, Thibault, Lopez

Absent: School Committee Member Gross, Alderman Pinard

Messrs: T. Clougherty, K. Cornwell, A. Jefferson, B. MacDonald

Update on School Facilities Improvement Project.

Mr. Tim Clougherty stated I just wanted to introduce the players involved with the project. To my right is Ken Cornwell, Project Manager for Gilbane. To my left is Alan Jefferson. He is our Program Manager. Behind me is Kevin Foley, the Assistant Project Manager with Ken Cornwell with Gilbane, Charlie Spicer who is our Deputy Program Manager with DMJM, Scott Caruth with Lavalley-Brensinger, and Bruce MacDonald with Arthur J. Gallagher here to talk about our OCIP in a little bit more detail as requested last month. With that I am going to turn it over to Alan Jefferson who can update you on the previous month's activities. We will let Ken Cornwell talk about some of the upcoming activities and if it pleases the Chair we will have Bruce talk a little bit more in detail about the OCIP and how the process works with the Owner Controlled Insurance Policy and entertain any questions.

Mr. Alan Jefferson stated let me just update the activities over the past month. We had the first day of school, of course, on September 3. Activities that were completed prior to that were floor replacements, vinyl tile floor installation at Smyth and Jewett and also at West High School. Overhead MEP work is scheduled to commence within the coming weeks and Ken Cornwell from Gilbane will update you on that. Also at Central High School excavation work to facilitate garage construction has also commenced. A temporary bus drop-off to facilitate student drop-off has also been constructed off of Lowell Street. Some of the

ongoing activities include contact on a regular basis with Keyspan, PSNH, DPW and Verizon to coordinate facility work. Currently we have a number of design submissions in review by the program management team. The actual civil and structural review for Central High School is complete. Central High School mechanical drawings and architectural drawings are at various stages of completion and under review as well as West High School. OCIP enrollment is ongoing. We have weekly project status meetings with the team to update each other on various activities. We also have running meetings with the Manchester Building and Fire Departments to make sure we keep them abreast of all of the design activities and code related work related to design. I would now like to turn it over to Ken Cornwell to update you on construction activities.

Mr. Ken Cornwell stated just a quick update on design. Alan was talking about where we are. We have completed design on what we call Design Group 0. There are six schools in Design Group 0. The primary schools, the high schools and the middle schools and MST is in that group. We will have finished the design for West High School construction documents by the 30th of this month. We expect to submit final construction documents for Central High School on October 10. Memorial design starts late next month. All of the middle schools as well as the MST design should be done by spring. Actually all of the design finishes up in late April so we will be in pretty good shape. From a construction update, if you haven't been to Central High School and I know some of you have, there is lot of removal we have to do at that school. We have 45,000 yards of material to remove to construct the building and the garage. As of today, roughly 28,000 yards of that material has been removed. We expect to be done with the excavation in the next two weeks. Hopefully we will be done on Saturday. We intend to fill up along Beech Street and continue down with the excavation. We still have another four feet to go. With the underpinning, the Classical Building High School will be underpinned. We will just extend the foundation down another 15 feet because we are going to be within 19 feet of that building. We expect to start concrete foundations on Wednesday. West High School's concrete are out to bid. We expect to award that contract on October 3. We would like the contractor to mobilize on October 15. We expect steel to start at West High School on January 4. In order to meet the current projections for the schools we are going to be working in the schools at nighttime. We are scheduled right now starting October 20 to have a second shift starting at Central High School in the Practical Arts Building. We will work there until it is done from the basement to the fourth floor and then we will go to the Industrial Arts and the Classical and the James. All operations will be happening at night. It is a 3 PM to 11 PM shift. The same thing happens at West High School. We start a second shift in the Makin building on October 20 and expect to work the Makin building and then the Bean building.

Alderman Thibault asked do you intend to encumber Notre Dame Avenue at all as you are playing with this thing.

Mr. Cornwell answered the way it is set-up now, the only encumbrance we could possibly have is when we erect the steel, which is probably a couple of day operations. We think we will be able to do it off of the sidewalk. We will end up taking the sidewalk on Notre Dame for a period of time.

Alderman Thibault stated I am just wondering about the school buses that come there every morning and afternoon. Is that going to be encumbered and that is what I am worried about because that is a chaotic situation as it is. I just wanted to know if you were going to be encumbering that because I would like to maybe talk to the bus company about making some other arrangements.

Mr. Cornwell responded we have anticipated school activities from bus drop-offs but we are not allowing any deliveries of material from 6:30 AM until 8 AM. We also suspend our operations at 2 PM and don't start again until after 3:45 PM. We plugged in some time and working with the principals we are flexible enough to adjust that. Hopefully we won't have that problem. The two elementary schools that we started the summer work on and actually pushed forward with finishing up the floors I think we are all pleased with how they turned out. I had an opportunity to go over to Jewett Street yesterday just to look around and I think it turned out well. It is just a vision of things to come. We have the same issue at Jewett and Smyth only we don't have a new addition there. We will start night work at Jewett and Smyth Road schools in late October or early November. Those jobs are out to bid now. We have all six of those schools out to bid and the first two to come off the drawing board or off of the bid process are Smyth and Jewett. They will start again roughly toward the end of the month. We will update you with more details as we go forward. That is all I have on construction.

School Committee Member Beaudry asked at Central how far behind or are you behind would you say on the project as far as the garage.

Mr. Cornwell answered based on our scheduled today we are not.

School Committee Member Beaudry replied I thought the slab of the floor of the garage...there was some talk about that being in before the end of September.

Mr. Cornwell responded no. As a matter of fact I had been asked by Mr. Risk to revisit again...I think I showed the Board a utilization plan using a Powerpoint presentation that actually showed the structural steel going up...actually if you remember we are putting up the steel and erecting the inside of the building so

little slabs will probably be the last thing to go in. I would love to get them early but we have to erect the steel from the inside out.

School Committee Member Beaudry stated at West High School, the doors, I know it was brought to Tim's attention that the doors have to be changed and have windows put in them. Is that going to be considered a change order or are new doors just going to be put in? I don't think the jambs have to be put in but a door has to be put in that has a window so you can see for a means of egress.

Mr. Cornwell replied those doors are not meant to be used as they are being used now as an egress under the courtyard out of the stair. I think what we found is they are rated assembly, which means that you can't cut holes in those doors without fire approval. I think what we found and if you want to stop just to highlight it we have now been given permission from the manufacturer to put lights in that window. Tim and I haven't talked about how we do that but it is not a big expense.

School Committee Member Beaudry asked, Tim, on the buildings that have been completed for the floor tiles I know we had some tiles that were cracked and broken at Highland. Did somebody actually go over and expect the floors to make sure that there are no pebbles underneath it and we don't have spider cracks on the tiles and if there are will they be replaced before we pay off the final payment?

Mr. Clougherty answered most definitely. Gilbane has a quality assurance plan that they are following and we have asked to be a party to the final inspection. Obviously it is well within our rights to do that but we would like to do it in concert with Gilbane's folks. Furthermore, Gilbane is going to be working at the building for a period of time and it is pretty easy to tell. It actually gives us more of an opportunity to identify areas that were deficient say with a pebble underneath or something like that. I am not concerned about them not coming back and honoring the warranty.

Mr. Cornwell stated I have a comment from a Gilbane standpoint. It is Gilbane's company policy and those of you who didn't work with me on the Verizon...one year after the opening of that building we came back to that building and walked that building with a committee and with the owners and users. We were able to take care of the minimal problems they had with the contractors who did the work. We will do the same with the Manchester schools. When Jewett Street School is finished next summer, before we are done our program we will be back looking at Jewett Street to make sure there is nothing wrong.

School Committee Member Paradis stated we had mentioned last evening, Ken, that at West Side High School where they used to have a chain where the

courtyard was there are some posts and people used to park there. In fact, I used to park there. If I couldn't find a parking space around there and I needed to get into West real quick I would park there. Literally I was on the courtyard on the sidewalk area. Are you finding any problems with any of the students parking there or anyone else parking there where it interferes with your work at all?

Mr. Cornwell answered no. As a matter of fact I talked to the principal over there today. We have had no problems at all with that entrance and actually we have been pretty good about patrolling that. The resource officer has taken care of it. I think the only problem operational wise that we are having at that school right now is something that Tim and I haven't had a chance to talk about and that is the way the school is structured now it was never structured to have that door be unlocked all day long because it actually becomes an entrance for kids to come and go. That is something that Tim and I need to look at with Jan. We need some control there.

School Committee Member Paradis asked so people don't wander in from the street.

Mr. Cornwell answered yes.

School Committee Member Paradis asked but the students are hanging in there...students and teachers, as far as parking in that area. You haven't had any safety problems? I am just thinking. I have seen some speeding around there a little bit and I have seen some parking there in the different areas where they are not supposed to park but I think at the end of the day they are either ticketed or whatever like at Memorial. You said that the resource officers are really taking charge of that area.

Mr. Cornwell answered yes. I want to remind everybody that we are actually using that underpass now as an access since they took the connector out at the ground level. They are actually using that to come and go. The students come from the Bean and Makin buildings. What is happening now is that exposure to Main Street is open so the kids can come and go. The only concern is the fact that anybody can come in off the street. Tim and I talked about it before. Actually, nobody seems to know what to do about it. Eventually those doors...there is a glass set of doors that will block that entrance forever, which is secure. Unfortunately it is probably the last thing we can put up. There are some dumpsters there. There are some materials stored there. My people have been able to work with Jan.

School Committee Member Paradis asked you don't think we will have any problems there this winter when the snowplows are pushing snow over to that area at all.

Mr. Clougherty answered the snowplows will definitely not be pushing snow onto that area.

School Committee Member Paradis asked they will be pushing it on the other side towards the field.

Mr. Clougherty answered there is some area between the building and the road that can be used for snowplowing during the winter.

Alderman Lopez asked can you tell me what the timeframe is going to be in reference to the MST and about the publicity on the Internet as you go on with construction to make the people of the City of Manchester aware of what is going on.

Mr. Cornwell replied the website that we have for the Manchester public schools is up and running. It currently has a schedule posted there. That schedule will be updated monthly. Right now the program is showing that MST renovations are primarily going to be mechanical updates and will probably not happen until 2005. When we are working at Memorial if we have an opportunity to go over to MST and change a unit out we will do that maybe next year in the summer but right at the moment it is going to be in the summer of 2005 when that building is changed over. The TV is going to go on emergency power and we are going to upgrade some doors. Any upgrades or changes to that schedule we will post on our website.

Alderman Thibault stated I appreciate School Committee Member Paradis' questions about traffic but let me tell you there is a problem at West High School. The problem is on Conant Street. What happens and I am not sure how we are going to straighten it out yet but what happens is that a lot of people come on Conant Street and stop and drop-off their children and the buses get backed up all the way down to Granite Street. I think this issue belongs in the Traffic Committee not here. I think it belongs in Traffic to try to find a pattern that would work where the people do not drop their children off in front of the school on Conant Street. I think we are going to have to police that and get the proper direction going over there for people to let their kids off. When four or five cars stop on Conant Street and they are holding back five or six school buses, that is a real problem. I get constant complaints and I have been there myself and witnessed it.

Alderman Thibault moved to refer the issue to the Committee on Traffic/Public Safety. Alderman Lopez duly seconded the motion. There being none opposed, the motion carried.

Alderman Lopez stated what I am interested in is do you have a full-time safety officer other than the foremen.

Mr. Cornwell responded I am the designated safety officer company-wide. I have a full-time superintendent on every job who has a certification in their pocket but no, there is not a full-time safety officer on the project and we don't plan to have one.

Alderman Lopez stated the reason I brought it up is some people have approached me regarding the...what do you call it Tim, wrap around insurance.

Mr. Clougherty responded it is a wrap up insurance program.

Alderman Lopez stated right and I have been told that it is better to have a safety officer to insure that the foremen are not pushing the workers and creating a problem and, therefore, we won't spend as much money to dip into worker's compensation and all of that stuff. Could you assure us or look into that to make sure that we are covered fully and that the workers are not being pressed for time and safety factors?

Mr. Clougherty answered most definitely. In addition to the folks that Ken has talked about they also have a corporate safety manager. We have discussed at length the question that you raised relative to the full-time safety manager because it is a loss sensitive program. At this point in time, we are going to move forward without the full-time safety manager but we are going to closely monitor our losses to make sure that they are in line with anticipated losses for a project of this nature. The safety program itself was presented to our carrier, Liberty Mutual, who is on board with the safety approach that Gilbane has taken. So, it is not an uncommon approach if you will for a wrap up program to do it such as Ken has described. Maybe at this point it would be a good time to have Mr. MacDonald come up to talk about the OCIP a little bit.

Chairman Herbert stated he can come up but I think School Committee Member Beaudry has a few questions.

School Committee Member Beaudry stated I have a follow-up to your question because I do have concerns myself speaking to some people in the field...actually other school board members in Massachusetts who have gone through a similar plan. They say it works well but their concerns are if you don't have a safety

officer on-site who is part of the district that you have to be careful that if claims are not taken in where people are actually getting injured but claims aren't filed for whatever reason...not to hide it but they just don't want to...you know somebody had to get stitches so they bring them to the hospital to get the stitches and then they go back to work if that claim isn't put on the books that could be a problem down the road where once the site is all done they can come back and say hey I was injured and now the City is going to have to pick up the cost of this worker. That is the biggest concern. It is kind of having the fox in charge of the hen house where if you have your own person on site they would be overseeing all of the supervisors amongst the projects to make sure that all injuries are being documented and that they are not going unnoticed.

Mr. Clougherty stated there are a lot of things to address there. Let me just start with the last thing. As far as monitoring the project, that is why we have DMJM as part of our program management team. We are going to have full-time, on-site personnel during all major phases of construction, as well as during the critical stages of the renovations. We also have representatives from Liberty Mutual, our insurance carrier, who come out for bi-weekly meetings. Once every two weeks they come out and do an evaluation of all of the sites. It is more...it is not like an OSHA inspection but they come out and ask questions of the foremen like are you doing your tool box talks? Do you have records? Once they are done their site evaluations we come back to our site office and we review the findings and any potential deficiencies that they have identified and we also plan on looking at any claims that have been made and how they are followed-up on and what is the status of the individual who has made a claim. Is he back to work? Why isn't he back to work? Things like that. We have also worked very aggressively in order to arrange for a relationship with providers, both from an emergency medical standpoint as well as a follow-up occupational health standpoint to insure that these workers are being treated fairly and properly and also that they are coming back to work in a timely fashion. I am not sure if that answers all of your questions but I will let Bruce talk a little bit more about the highlights that I just gave you of the program.

School Committee Member Beaudry stated just to reiterate the other concern is to make sure that all losses are paid up before the project is completely resolved. You could have somebody who has a permanency and that loss might be associated with that job for a long period of time. We have to make sure that that kind of case is taken care of before Gilbane and the group leaves town.

Mr. Cornwell responded Gilbane probably did the second largest construction project in Manchester and that was the Verizon Wireless Arena. The Verizon Wireless Arena was roughly \$50 million. We had no full-time safety person. We had minimal losses on the job. It was also an OCIP. To answer your question

about the claims and Bruce can talk more about the insurance management of that but I get loss control runs on that job. Typically the claims that you see that are long term are the ones that we knew were coming anyway because they were not legitimate injuries to begin with. Not to say that there is fraud out there but that happens everywhere. Every accident that happens on a Gilbane job, every accident that requires somebody to go to a clinic and get a stitch is required by my people and by the corporation that I work for to have a written report filed with me. I can pretty much attest to that is how we operate. I just want to assure you that having a full-time safety man is not always the insurance policy you are looking for. You are looking for due diligence and making sure that everyday those workers are going to have the proper care. There are going to be accidents. That is just the way it is. We just want to make sure we control them and if we do have them that they don't happen again and hopefully we are going to come out of here on top like we want to be with the City making money and not paying money.

Mr. Clougherty stated with that I will let Bruce MacDonald give a quick overview of the trials and tribulations of the Owner Controlled Insurance Policy.

Mr. Bruce MacDonald stated I am from Arthur J. Gallagher and Company. We are an insurance brokerage consulting firm with a number of employees across the United States. I want to first thank you for the opportunity to address you and to be part of the team building this terrific project. Personally, I have had experience with about 15 wrap up insurance programs in New England and the country and on the issue of the claims let me tell you that using the strong practices of Gilbane and the strong direction of the team that we have here we have tried to put in place a very clear and concise program so that the contractors know who to report their claims to, when they should be reported...the insurance company has actually come out to see the sites. The claims people have come to visit the sites so they can understand how important this job is and understand that we will hold them to the requirements that we will hold them to the requirements that we have put into the program and that is, for instance, a four point contact system within 24 hours. The insurance company is required to contact others for the injured employee - the City representatives, the actual employer of this particular person, as well as the medical facility where the person went to get treatment to make sure that the employee understands that the employee is getting treated at least as well as they would have and to make sure that the injured employees are being treated fairly and equitably by the OCIP program. Very briefly and I don't want to take up too much of your time but let me go back a little bit if I may. We came to this project through a competitive bid process. We are the administrators of the program, the OCIP insurance program. That means we approached a series of insurance companies to provide the coverage, got competitive bids, analyzed those bids and put forward a recommendation and a carrier was ultimately selected. Those coverages have been bound since June 16 of this year and they will run through

the term of construction, which I believe is scheduled to be September 2006. The program covers...OCIP means Owner Controlled Insurance Program. What it intends to do is provide coverage...the owner provides insurance coverage that the contractors would normally provide. Those coverages are worker's compensation insurance, general liability or third party liability or injuries to people who may wander on to the site and be injured and excess liability to bring those limits up to a significant limit in the event of a catastrophic loss. Those are the coverages that normally would have been provided by the contractors under any construction project. The idea behind the wrap up or the OCIP is basically to try to put the coverage together in a pool and buy broader coverage to have concentrated safety and limits that would be higher than most contractors might have to protect the City, the School Board and the contractors from any accidents that might occur out at the job site. The plan is loss sensitive to the effect that the cost is split into two components – certain fixed costs and there can be a savings if the claims don't occur down the road.

Alderman Lopez stated let's talk about third party claims because we have had problems on third party claims in other situations. Would you explain to me what you consider third party claims for us to get reimbursed for the initial cost?

Mr. MacDonald responded the third party claim that the insurance coverage provides would be...the third party in this case might be someone who suffers some injury, either a bodily injury accident or property damage accident as a result of the construction. They may then try to go to the City and say my child was injured as a result of the fence or perhaps a car was damaged by spray painting during some operation. Those allegations of injuries would come potentially against the contractor but failing to get results there they could come against the City or anyone else they felt they wanted to try to bring an action against. That is the type of third party in this scenario that we would be dealing with.

Alderman Lopez asked would you consider one of the sub-contractors as being...if an employee gets hurt and we take care of everything and he files a third party claim against the sub-contractor once he gets reimbursed on a worker's compensation case do you insure that the City gets their money back.

Mr. MacDonald answered one of the advantages of having the OCIP or the wrap up insurance in this case would be if the injured party was to make an action of a claim and allege that the comp benefit that they received wasn't adequate for their injuries. Being that we have the same carrier on both lines of coverage – on the worker's compensation and on the general liability, ultimately what could happen is the worker's compensation carrier could go back against itself effectively and recover the funds that would have been paid out before the actual over claim was completed.

School Committee Member Beaudry asked on the OCIP are you hired by the City. Did Tim hire you or who actually hired you?

Mr. MacDonald answered Tim hired us.

School Committee Member Beaudry stated when we got into the OCIP policy was that before Gilbane put the bid in or after they put the bid in. You say it is a savings but is it a savings where it means additional dollars to Gilbane or is it a savings where it is additional dollars to the City depending on...did the bid include OCIP or did the bid include them having their own private insurance?

Mr. Clougherty responded from the infancy stages of the project we had contemplated using an OCIP. Once we developed our program and understood what the scope of work was going to be and overall the cost, which is directly proportional to the number of labor hours that are going into the project we were able to determine whether the OCIP was going to be feasible or not. In other words, are we actually going to have enough labor on the job to save money or are we not and that was contemplated long before Gilbane was chosen so our request for proposals included provisions that basically stated that the project will be under an OCIP and you are to price it accordingly.

Alderman Thibault stated just so I am clear because I am not sure if I completely understood that, are we saying here that the general contractor has got insurance no matter if he hires a private contractor to do anything in that building that they are insured. Is that what we are saying?

Mr. MacDonald answered basically yes.

Alderman Thibault stated then let me go back to what Alderman Lopez just said where if, in fact, this third party makes a claim. I don't think I got that fully and I would just like you to clarify that if you can.

Mr. MacDonald responded well the mechanics of an action over a claim can be dependent on the facts of the circumstances because the basis of an action over a claim is that the claimant gives up their right to a worker's compensation settlement and wants to pursue a third party claim if they could but they don't generally do that simultaneously. Generally, the injured worker would put in a worker's compensation claim and be paid lost time while the court case goes through the system and the appeals board and the labor board and things like that. Ultimately, since you have the same carrier providing the same coverage you are in a good position based on the legalities and the facts of the situation. If the third party action is allowed to proceed and a settlement is actually made one of the

things the worker's compensation carrier can do is put a lien on it which says yes you will be paid X amount of money but we need to be repaid what we paid you under the worker's compensation as you are paid out from this settlement.

Alderman Thibault stated let me go back to the first part of my question now. The general contractor will, in fact, not just insure his workers but he will insure the contractors that he brings on this job. I just want to make it clear...let's say a private sheetrocker comes in there and does 2,000 sheets. He is also insured through this system?

Mr. MacDonald responded that is correct. Anyone who is working on the site, with some limitations. They need to go through what we call an enrollment process. They need to tell us that they are on the site. They need to fill out a form that will on the one hand identify themselves. It will help the premium rate by them declaring their payroll and it will also tell us the amount of insurance that they didn't charge the job so that we can tally that up. There are some limitations in there but basically if somebody is going to be on-site and go through that process they are going to be safety trained and hopefully they are going to work better to eliminate these accidents if we possibly can and understand the requirements of not dealing with the students and staying out of student areas, etc. At the same time they will get a policy that ultimately the City is insuring the contractors.

Alderman Thibault asked and that responsibility reverts back to the primary contractor that he has to make sure that these guys have this insurance.

Mr. Cornwell replied I am going to help Bruce out real quick. We have a system in place with Gallagher, Liberty Mutual and the City where no one can work on any of our projects unless they have been enrolled in the insurance program. There are multiple checks to make sure that that doesn't happen. As it happened we found one already where the application never got done. We had some issues but to answer your question every contractor that comes to the job whether it is the drywall guy working for somebody else is in that program.

Alderman Thibault stated that is basically what I was looking for.

Alderman DeVries stated you spoke briefly about the provider relationship that has been developed. Are you referencing some sort of a managed care similar to what we already utilize in the City?

Mr. MacDonald responded I don't know if it is similar to what the City already uses but it is a clinic that has experience with occupational construction/occupational health types of things.

Alderman DeVries asked so that would be a short-term care facility.

Mr. MacDonald answered correct.

Alderman DeVries asked is there also a relationship developed for what might become a longer term injury.

Mr. MacDonald answered in addition to that, the service provider, Liberty Mutual, has significant resources as far as nurse case managers and others to help out with longer term injuries.

Alderman DeVries asked could you also address for me and maybe Ken Cornwell would be better to answer this but the limits of liability for the City. We are reinsuring after certain break points aren't we?

Mr. MacDonald answered the worker's compensation insurance has two limits. One is for lost time wages and those are statutorily regulated. There is also employer's liability, which is listed at \$1 million. The third party liability or commercial general liability is written with limits of \$2 million for each occurrence or \$4 million on an annual aggregate basis. That policy is supplemented with excess liability policies and goes up to \$50 million.

Alderman DeVries asked is that each or collective \$50 million.

Mr. MacDonald answered that is per year. As we are talking about limits, I should also mention one of the unique benefits of the OCIP is there is also an extended coverage called extended complete operations, which will go out for five years after the policy is actually finished. That is an extension of the bodily injury/property and commercial liability.

Alderman DeVries stated to address a situation that School Committee Member Beaudry had brought up, is there going to be any sort of a contingency to address beyond the five years that you brought up should there be lingering claims that are disabling.

Mr. MacDonald responded within the financial protection of the program there is a deductible that is for each claim. There is also an aggregate deductible that does limit the claims to a certain amount and limits the claims in their gross amount to a higher level as well. If those limits were to be exceeded in effect the insurance company, Liberty Mutual, comes down and does first dollar. Time wise when the claims are reported we will report two values to the City and contract those on a financial basis. That would be the amount that has been paid to date and the best

estimate of what those claims would cost when we finally close them out. It will take time to close them for larger type claims.

Alderman DeVries asked so will Liberty Mutual be handling all of the appealed cases or will that fall under our City Solicitor.

Mr. MacDonald answered Liberty Mutual.

School Committee Member Kelley-Broder asked all of these premiums are audited on a yearly basis correct.

Mr. MacDonald answered yes and no. The premiums...the contractors are asked to send in their payroll on a job basis and then once a year they would be trued up but they are expected to be...the payroll projections we are looking at on the job are supposed to be for the completion of the project.

School Committee Member Kelley-Broder asked so it is based on the payroll by each contractor or just Gilbane.

Mr. MacDonald answered the total of everyone who signed up in the program so it would be each one separately.

School Committee Member Kelley-Broder asked so it is up to them to realize if they are the drywallers or if they are the concrete layers. Who is compiling all of the data?

Mr. MacDonald answered when they are bid on the work they are given a procedures manual and they are shown the form that they will need to send in on a monthly basis to identify their payroll. Those forms go in to Liberty Mutual. Liberty Mutual will verify that the right type of codes are being used. There are different sort of steel codes. There are different rates for different types of steel. They will verify that. Most of that verification is really only going to be used ultimately to test out the cost of insurance because the cost components of the Liberty Program are on a gross rate versus the payroll. The rates aren't different for the different classes. There are composite rates. A rate for the liability, a rate for the worker's compensation across the board.

School Committee Member Kelley-Broder stated I guess what I am trying to get at is you have an estimated for the job and that is not a yearly estimate or is that...

Mr. MacDonald interjected that is for the construction to go out until September 2006.

Alderman Lopez stated I just want to go back to the five-year limit...

Mr. MacDonald interjected the extended completed operations coverage.

Alderman Lopez stated let's go back to an incident where say a kid gets hurt. Your outstanding claims at the end of the project. I don't quite understand that five year...those outstanding claims have to be taken care of by you no matter if it goes beyond five years from what I understand of the insurance business, correct?

Mr. MacDonald responded you reach a point and again this is legal and I am not a lawyer but there are certain things covered by statutes of repose in building construction that when a building has stood in a certain state for a significant amount of time...it is like a statute of limitations. If the ceiling was to fall in the building, the building or the City wouldn't necessarily really be responsible for that incident as far as that type of a project issue. The five years is meant to tie in closely to the statute in New Hampshire so that there would be coverage in effect for the period of time for their to be injury that was reported or occurred really after construction operations ended.

Alderman Lopez asked, Tim, have you talked to Harry Ntapalis and married these two gentlemen up.

Mr. Clougherty answered Bruce and Harry know each other quite well. Unfortunately, I invited Harry to attend at the Committee's request at last month's meeting but he had a previous commitment outside of town this evening. I thought that Bruce could answer the questions that the Committee may have adequately. Harry and I have worked together to formulate the OCIP since its inception. We met initially at the Verizon Wireless Arena with our insurance consultant, J.H. Albert and their representative, Michael Rodman, in order to first ascertain whether this was going to make sense and I believe that was back about 18 months ago when we started talking about it. Harry has been an integral part of this process right along.

Mr. MacDonald stated I speak to Harry almost every other day. He is looking at the insurance policies and has put a lot of time and effort into the insurance side of this.

Alderman Lopez replied it is good to hear that Harry is involved. I was interested on how you check the payroll of the subcontractors and everything and I think that is really good and on the City side we need to do some stuff like that. I wanted to bring that up to Harry too that the way you are doing it is the right way to do it and maybe we are doing something wrong...well not wrong but maybe we can capitalize on your experience on the City side too.

Mr. MacDonald stated this is a true partnership from Harry's side and I will also say that it does stem from Gilbane's commitment as Ken said that they don't want anyone on the job site...there have been cases of people coming to the job site and not having gone through the enrollment process, which they were advised about, and being told to go home for the day and get their paperwork in order and come back the next day when it is done. We have been working as a team on this.

School Committee Member Beaudry stated I just want to get it clear again in my mind on the long-term care. Let's say we have a scenario where a scaffolding breaks and a worker falls and ends up becoming a paraplegic and is in a wheelchair. His care is lifelong. This insurance that we have, does that cover that individual's healthcare for the rest of his or her life?

Mr. MacDonald answered it would be in accordance with the worker's compensation act. It would be what the worker's compensation act would provide for them – their lost wages, their medical care for the rest of their life, yes.

School Committee Member Beaudry asked so that five-year timeframe again is somewhat confusing. What is...

Mr. MacDonald interjected the five year time is simply an extension. After construction operations end if there was a claim to arise a year later that type of claim would be somewhat nebulous but it would be something like if a ceiling was to collapse or a tile was to collapse then the question would be who was responsible for that.

School Committee Member Beaudry asked so you are saying you have a five-year window for anybody who worked on that project to come forward and say they had a claim. After the five year window was closed then if a sheetrocker as Alderman Thibault stated if he or she was injured and never put a claim in or if they did put in a claim after five years and they wanted to resubmit they couldn't do that.

Mr. MacDonald answered that is correct. I will have to double-check but I think the NH labor law says that that type of claim has to be put in within a year. It may be a bit longer than that but if they don't...let me go back. The safety program of Gilbane and their requirement is that that needs to be reported within 24 hours to the appropriate people. If it goes out for as long as...if somebody wants to make a claim or an allegation of a claim I believe they do have limitations to do that anyway before we get to this program.

School Committee Member Beaudry responded you are looking at recurrence. If somebody was injured, say they hurt their elbow and they were all set and they went back to work and six years later they come back and say hey my elbow is bothering me again that would be a recurrence of a prior injury and are you saying that is where the five year window period would be?

Mr. MacDonald replied that five year window period is really only for a claim that was to occur after construction is complete and the contractors are gone. The scenario that you described there, there wouldn't be a problem anyway.

School Committee Member Beaudry asked how could they do that. If you have to put a claim in within 24 hours of the injury, how can...

Mr. MacDonald interjected you practically can't on worker's compensation. That is the example. We need to look at probably a third party liability claim. The worker's compensation is going to take care of itself. The completed operations is a liability coverage so what that is going to be is if someone were to come back and say I wasn't a worker but something fell on my car two years ago and I didn't report it. Whether that claim is going to be paid or not would be based on the facts but potentially if something like that did happen this window would be there to try to do the right thing.

Chairman Herbert stated thank you. I think you answered everybody's questions. We have in front of us a draft policy concerning school construction change orders, which is an issue that was raised at our last meeting. We were promised a response and this is the response. My first question is the timing on this. Do we want to tackle this tonight or do you want to think about it?

School Committee Member Beaudry responded I would like to just talk about the money part. My own personal opinion is I think \$25,000 is too much. I don't know if we discussed the monetary value but that is the only stumbling block that I have. How high do we go before they have to come before this Committee?

Chairman Herbert asked so is it okay if we go at this tonight and see if we can't wrap it up one way or the other.

Alderman Thibault moved to table this item.

Alderman Lopez stated since I brought up this issue at the last meeting and tabled it to give Tim an opportunity to present this policy, maybe Tim can enlighten us as to how he came up with the \$25,000 figure for change orders.

Mr. Clougherty responded it was an arbitrary figure based on previous change orders that we have processed and some that we have seen on other jobs in order to keep us moving. It is obviously not a number set in stone. We are obviously willing to work with you on all of this. That is why this was presented as a draft policy.

Alderman Lopez stated but you came up with the figure so...I don't think you were involved with the civic center were you.

Mr. Clougherty answered no I was not.

Alderman Lopez stated Mr. Cornwell was though.

Alderman Garrity duly seconded the motion. Chairman Herbert called for a vote. The motion failed.

Alderman Lopez stated I think it is important and I don't mind tabling this but first I would like to hear from Tim. Do you anticipate any change orders that might come in? Would a lower number be sufficient? Maybe Mr. Gilbane can tell us about some of the change orders he had for the civic center.

Mr. Clougherty responded we will entertain change orders anywhere from \$200 to \$300,000 during any period of time. The intent of this policy is to allow us to keep the project moving and give us some leeway with authorizing change orders on behalf of the department and on behalf of the committee while keeping the project moving while fully understanding that we don't have the authority to change the scope of the project. These would be strictly related to differing conditions if you will like hazardous materials that we weren't able to identify or different types of soils that we find and things like that. We were tossing the idea around in the office today...you know someone is going to ask you tonight what type of thing would cost you money and if you don't have an answer...say we have a crane on site doing demolition at Central High School and we have the steel ready to go up at the same time and it is a very tight operation and we have a crane that takes down a part of the building and we realize that there are some transite panels there from some previous construction containing asbestos. Now we have a crane sitting on site at \$1,000 to \$2,000 a day and a load of steel with a crane ready to go up and a bunch of asbestos sitting in the wall. Ken comes to me and says can you authorize a change order so I can get an asbestos abatement contractor over here right away so we can get this done. We are going to have to do it regardless and if I wait until that next month's committee meeting, those trucks are sitting on site and we are incurring those delay costs. While giving me the authorization to move forward with allowing that work to proceed we would

still be moving the project forward. We haven't changed the scope of the project and we have incurred fewer costs than if we had waited to execute such an order.

School Committee Member Beaudry asked didn't you already have a change order.

Mr. Clougherty answered no we have not.

School Committee Member Beaudry stated I thought there was asbestos in a wall that was found.

Mr. Clougherty answered no.

Alderman Thibault stated as I look at this, Tim is asking that if there is a change order less than \$25,000 he is not going to hold 25 contractors waiting until next month's meeting. He is going to be able to do that tomorrow and I fully agree with that. If, in fact, there is a change order that doesn't go beyond \$25,000 that he feels has to go ahead, he will report it to the Committee and let us know what happened but we don't want to hold him up for a month.

School Committee Member Beaudry stated point of order. What we have in front of us, if you look at the third paragraph it says without immediate approval or delay in the project so if there is a change order that has to be done immediately or something that will escalate the cost, they go ahead and do it. This is only for change orders that aren't time sensitive. If it was a time sensitive change order and it is going to escalate the cost of the project, they have the authority to do it under that third paragraph. It is just how much are we willing to let them spend before they have to come before us when it is not a time sensitive issue?

Chairman Herbert asked was that a point of order.

School Committee Member Beaudry answered that was my point of order.

Chairman Herbert stated it was a good explanation but I am not sure it was a point of order.

School Committee Member Beaudry stated the point of order was I think that we are getting confused on what we are voting on.

Chairman Herbert responded we haven't voted yet.

Alderman Garrity stated I certainly don't have a problem with the \$25,000 number but what is going to be the policy with the \$5.5 million contingency fund. Are

they going to need approval through this Committee first to spend any contingency money?

Mr. Clougherty responded these monies would be coming out of the contingency fund. They are above and beyond the scope of the project as we have described. The reason that I put on the top that all change orders which materially change the scope of the project will be brought before this Committee for approval is my understanding was that the major concern was the scope of the project growing and that \$5.65 million shrinking in order to accommodate further work. We don't want the authority at the Department of Public Works to change the scope of work. That is clearly the jurisdiction of this Committee and we bring all of those things together for you. For instance, we didn't identify window replacement at Webster Street School and two years down the road we get there and say yes we missed something when we put the scope of work together and we think they should be addressed. I would work with Ken to get a number together and present it to the Committee. Do you think it is worth \$125,000 to replace the windows at Webster Street School? Would you like to take this out of the contingency fund, yes or no?

Alderman Garrity asked does that request go through the Building & Sites Committee of the Board of School Committee first.

Mr. Clougherty answered I believe statutorily that once the project is under construction the funds fall under the jurisdiction of the Joint School Building Committee.

Chairman Herbert stated this Committee is in charge of the project.

Alderman Garrity asked but would the Building & Sites...wouldn't that go through Building & Sites first so they could...they may have some other priority if this comes up a number of times.

Chairman Herbert stated we may have talked about it in terms of lessons to be learned or something that may impact us as a District but in terms of the project itself legally this Committee is in charge of the design-build project.

Alderman Garrity responded I understand that. Let me rephrase the question. Maybe the School Board or the Building & Sites Committee...let's say there are 10 different items that they think should be in the scope of the work. Does it go through the Building & Sites Committee first and that way they can list their priorities? Isn't that under their jurisdiction and not ours?

Chairman Herbert replied no, Sir, it is right here.

School Committee Member Paradis stated to follow-up on Alderman Garrity's comments when we did McLaughlin School I remember all change orders coming through the Joint School Committee and I believe, Mr. Chairman, as you said in our bylaws of the School Committees it is the Joint School Building Committee. Building & Sites...all of the change orders didn't come to us and I have been on that committee for four years. The \$25,000 I feel is a fair amount because these buildings are old. These buildings are all old. None of them are new except for McLaughlin, which you are not going to do anything with, correct? These other buildings range anywhere from 35 or 40 years to 100+ years old and unfortunately I believe you are going to find asbestos. You are going to find problems there where there are going to have to be change orders. I feel comfortable with this amount, Mr. Chairman, and I feel as though it did say in the fourth paragraph, "all change orders, which are not time sensitive and whose value exceeds \$25,000, will be brought before the Joint School Building Committee for approval." Now also I would just like to mention that I believe even at McLaughlin when we have change orders I think some of them were in our favor, correct? We had some extra monies going along with some of the change orders that the company was able to find to save us a few bucks. This is going back four or five years now but when the change orders did come to this Committee we saw a little bit of savings that we actually put towards some other thing in the building that we wanted to do. For instance, maybe a window or something. I am very comfortable with this amount and I am comfortable with...the only other thing I wanted to ask you about is the program manager. How many of those do we have?

Mr. Clougherty responded we have one firm that we have hired, DMJM and Alan is the program manager. We have a deputy program manager, Charlie Spicer, who is behind me. We have an administrative/technical assistant that takes care of those types of functions and right now we have one construction inspector and we anticipate bringing on more as the construction pace is up.

School Committee Member Paradis replied good because those are sort of as you explained before Clerk of the Works but they are even better because it is an all program management type system. I just wondered when we were talking about insurance are these program managers...do they have any expertise or education at all in safety? For instance, if they saw something that they didn't think was correct who would they address on that? Would they address someone on that, Al?

Mr. Jefferson responded that is an issue that would be addressed by the construction manager. If we see something it is brought up to the appropriate superintendent.

School Committee Member Paradis stated that helped us a lot with the McLaughlin addition with the different types of Clerk of the Works where we only had part-time ones for some of the buildings in the past.

Alderman DeVries stated I think Sandra Paradis just brought up something that we should add on to this policy and that would be if there is a change order that is going to save us money it doesn't need prior approval. I also would suggest, because I do think some of us are uncomfortable with initialing starting at \$25,000, we are trying to keep control over that \$5.5 million contingency...might I suggest that this evening we bring it down to a number maybe half of that or \$12,500 and if we find that that becomes too cumbersome for you it can always be upgraded. You can come back to the Committee and tell us that it is not working and justify why you want us to increase the amount and we can address it at that time.

Alderman DeVries moved to amend the draft policy by changing the amount from \$25,000 to \$12,500. Alderman Lopez duly seconded the motion.

Chairman Herbert stated it doesn't mean that change orders under \$25,000 will not be brought to our attention at the end of the month. We will be aware of change orders. My instinct is the opposite of yours. You say cut it in half and if they have a problem we can go up. My instinct is to watch and see what the change orders come in and look like and if I feel like they do something that should have been voted on then we can alter it. I would rather have a look see at how it works rather than change it right now simply because we could. That would be my opinion on this.

Alderman Thibault asked, Tim, do you have an idea as to what it would cost to keep a crane on site for six days.

Mr. Clougherty answered what size is the crane.

Alderman Thibault stated I don't know but you talked about a crane before that might be in the area. What would it cost to keep that crane there for six days?

Mr. Clougherty responded depending on the size of the crane, anywhere from \$800 to \$1,500 for the day. Six days with a big crane is \$9,000.

Alderman Thibault stated that is why I went along with what I said before about the \$25,000 because I believe that keeping a crane there for six or seven days is roughly in the \$18,000 or \$20,000 range. That is why I went with the \$25,000.

School Committee Member Beaudry stated again I want to reiterate a little bit about what Alderman DeVries said. We don't want to stop the project and that is why I think paragraph 3 specifies that. I think the biggest concern, at least on the Aldermanic side from the meetings I saw, was that \$5 million contingency fund. They wanted to make sure that it was scrutinized for every dollar that was spent. To just give a \$25,000 figure...as long as the project is not going to be hindered by this I don't understand why we have to give any monetary number. If there is a change order and they can wait until the meeting, then wait until the meeting and come and tell us what they want to do. If it is something that is time sensitive or it is going to cost more by not doing it then they go ahead and have the authority to do it under paragraph 3.

Chairman Herbert responded that is all well and good. I understand what you are saying but we have a motion and this is our staff's recommendation.

Alderman Lopez stated I want to point out that the reason to go down to half of it so the people really think about these change orders and be conservative. It is not hurting the project. We still can move forward with the project. I think it is a good policy to have something like this where we can put our minds to work rather than the pencil.

Chairman Herbert called for a vote on the motion to amend the draft policy by changing the amount from \$25,000 to \$12,500. Alderman Lopez requested a roll call vote. School Committee Members Herbert, Paradis, Kelley-Broder, Alderman Thibault, and Alderman Garrity voted nay. School Committee Member Beaudry, Alderman DeVries, and Alderman Lopez voted yea. The motion failed.

Mr. Clougherty stated Alderman DeVries had made a suggestion regarding change order deducts, which are a reality in this project. What I would recommend for an additional paragraph to meet those requests would read something like this, "change orders which are non-monetary or reduce the contract value do not require prior approval of the Joint School Building Committee."

Alderman Garrity moved to amend the policy as recommended above. School Committee Member Paradis duly seconded the motion. Chairman Herbert called for a vote. There being none opposed, the motion carried.

Alderman Garrity moved to approve the draft policy as amended. School Committee Member Paradis duly seconded the motion. The motion carried with Alderman DeVries, Alderman Lopez, and School Committee Member Beaudry being duly recorded in opposition.

There being no further business, on motion of Alderman Garrity, duly seconded by School Committee Member Paradis, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee